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9
10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF NEVADA**

12 JAMES OFELDT,)

13 Plaintiff,)

14 v.)

15 TERRANCE DEEDS, et. al.,)

16 Defendants.)

Case No. 3:10-cv-00534-MMD-VPC

**STIPULATION AND ORDER FOR
DISMISSAL WITH PREJUDICE**

17 Plaintiff James Ofedlt, *pro se*, and Defendants, by and through their counsel, Catherine
18 Cortez Masto, Attorney General of the State of Nevada, and Robert Simon, Deputy Attorney
19 General, hereby stipulate and agree, pursuant to Fed. R. Civ. P. 41 (a)(2), that all proceedings
20 in the above-captioned matter be DISMISSED WITH PREJUDICE upon Order of the Court, with
21 both parties to bear their own fees and costs.

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1 The stipulation for dismissal was agreed upon as part of a settlement between the
2 parties, a copy of which is attached.

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4 DATED: ^{September} ~~August~~ 4, 2012.

By: 

JAMES OFELDT, *pro se*

6 DATED: ^{Sept} ~~August~~ 7th, 2012.

7 CATHERINE CORTEZ MASTO
8 Attorney General

9 By: 

10 ROBERT SIMON
11 Deputy Attorney General

12 *Attorneys for Defendants*

13 The parties having stipulated and for good cause shown:

14 IT IS SO ORDERED that this matter be dismissed with prejudice and for each party to
15 bear their own fees and costs.

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19 JUDGE, UNITED STATES DISTRICT COURT

20 DATED: September 7, 2012
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ATTACHMENT

ATTACHMENT

COMPROMISE AGREEMENT AND RELEASE

Plaintiff James Ofeldt ("Plaintiff") and Defendants Deeds, Hansen, Peterson, Moskoff, Perkins, and Postma, and any and all other individuals or entities named in Plaintiff's underlying lawsuit pending in the United State District Court, District of Nevada, case number 3:10-cv-00534-MMD-VPC (hereinafter "Defendants") on behalf of themselves and all representatives, employees, employers, agents, attorneys, affiliates, successors, heirs, and assigns, in consideration of the promises made herein, agree as follows:

Nature and Effect of Agreement

1. This agreement consists of a compromise and settlement by the parties of their claims against the other party, and a release given by each party to the other relinquishing all claims against the other. By executing this agreement, each of the parties intends to and does hereby extinguish the obligations heretofore existing between them. This agreement is not, and shall not be treated as, an admission of liability by any party for any purpose. This agreement is entered into in good faith, in accordance with NRS 17.245 *et seq.*

2. The scope of this agreement covers all events and disputes described herein and those events or occurrences complained of in the legal action described in paragraphs 5-6 of this agreement.

3. The parties agree and acknowledge that this agreement is enforceable in any prior, on-going, or future administrative hearing, inmate request ("kites"), or grievance (formal or informal) arising from or related to the action described in paragraphs 5-6 of this agreement.

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1 4. The parties acknowledge that this agreement is a complete compromise of
2 all matters involving disputed issues of law and fact relating to the action described in
3 paragraphs 5-6 of this agreement and the parties assume the risk that the facts or law
4 may be otherwise than they believe when entering into this agreement. Plaintiff is
5 further prevented from arguing or asserting this agreement is an admission of fault,
6 liability, or guilt as to any of the claims set forth in paragraphs 5-6.

7 Nature and Status of Dispute

8 5. On or about July 20, 2010, Plaintiff filed a *Civil Rights Complaint* in the
9 Seventh Judicial District Court which was later removed to the United States District
10 Court, District of Nevada and assigned case number 3:10-cv-00534-MMD-VPC. All
11 papers, pleadings, and orders from these actions are hereby incorporated by reference
12 as though set forth in full at this point.

13 6. Defendants have answered Plaintiff's *Civil Rights Complaint*, but deny the
14 allegations of Plaintiff's underlying claims.

15 Resolution of Dispute

16 7. Plaintiff will sign and deliver to Defendants' counsel a signed Stipulation
17 and Order for Dismissal with Prejudice for the action identified in paragraphs 5-6 above.

18 8. Defendants agree to deposit ONE THOUSAND SIX HUNDRED AND
19 FIFTY DOLLARS AND NO CENTS (\$1,650.00) into Plaintiff's inmate Trust II Account
20 and agree not to pursue the recovery of any costs Defendants have incurred as a result
21 of defending this matter.

22 9. Defendants also agree to waive any and all of Plaintiff's departmental
23 charges incurred or charged to Plaintiff prior to midnight on August 23, 2012 in whatever
24 amount they are, not to exceed \$158.71.

25 Mutual Compromise Agreement

26 10. Each party, in consideration of the promises and concessions made by the
27 other, hereby compromises and settles any and all past, present, or future claims,
28 demands, obligations, or causes of action, whether based on tort, contract, or other

1 theories of recovery, known or unknown, which that party has or which may later accrue
2 to or be acquired by that party against each other party and each other party's personal
3 representatives, employees, agents, attorneys, predecessors and successors in
4 interest, heirs, shareholders and assigns, arising from or in any manner related to the
5 subject matter of the disputes described in paragraphs 5-6 of this agreement.

6 Mutual General Release

7 11. Each of the parties on behalf of itself, its personal representatives,
8 employees, agents, descendants, ancestors, dependants, heirs, affiliates, shareholders,
9 successors, executors, attorneys, administrators, spouses, and assigns, hereby fully
10 releases and discharges each other party and that party's personal representatives,
11 employees, agents, descendants, ancestors, dependants, heirs, affiliates, shareholders,
12 successors, executors, attorneys, administrators, spouses, and assigns, from all rights,
13 claims, and actions which each party and the above-mentioned successors now have
14 against each other party and the above-mentioned successors, stemming from their
15 differences arising from or in any manner related to the subjects of the disputes
16 described in paragraphs 5-6.

17 Unknown Claims

18 12. Each party on behalf of itself and the above-named successors, agents,
19 attorneys, and assigns acknowledges and agrees that the release given to each party
20 upon executing this agreement applies to all claims for injuries, damages, or losses to
21 each party's own person and property, real or personal, whether those injuries,
22 damages, or losses are known or unknown, foreseen or unforeseen, patent or latent,
23 which each party may have against each other party. Each party further understands
24 and acknowledges that the significance and consequence of this waiver is that even if
25 that party or that party's personal representatives, employees, agents, descendants,
26 ancestors, dependants, heirs, affiliates, successors, executors, attorneys,
27 administrators, spouses, and assigns should eventually wish to bring additional claims,
28 or suffer additional liability or damages arising out of the matter referred to in

1 paragraphs 5-6 of this agreement, no party will be able to make any claims or pursue
2 any liability or damages that may exist as of the date of this release but which the party
3 does not know exist, and which, if known, would materially affect that party's decision to
4 execute this release, whether such decision is the result of ignorance, oversight, error,
5 negligence, or any other cause.

6 No Warranties or Representations

7 13. The undersigned warrant that no promise or inducement has been offered
8 except as herein set forth; that this release is executed without reliance upon any
9 statement or representation of the person or parties released or their representatives
10 concerning the nature and extent of the damages and/or the nature and extent of the
11 legal liability therefore and/or the nature and extent of liability insurance available with
12 respect thereto.

13 No Assignments of Rights

14 14. The parties represent that they have not heretofore assigned or
15 transferred, or purported to assign or transfer, to any person or entity, any claim or any
16 portion thereof, or interest therein, and agree to indemnify, defend, and hold one
17 another or any related person or entity of the parties, as described above, harmless
18 from and against any and all claims, based on or arising out of any such assignment or
19 transfer, or purported assignment or transfer, of any claims or any portion thereof or
20 interest therein.

21 Advice of Attorney

22 15. Each party warrants and represents that in executing this agreement,
23 each party has had the opportunity to consult an attorney and that each party fully
24 understands the terms of this agreement. Each party further acknowledges and
25 represents that, in executing this release, each party has not relied on any inducements,
26 promises, or representations made by the other party or its attorney that are not
27 expressly set forth in this agreement.

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Entire Agreement

20. This agreement contains the entire agreement between the parties.

Effective Date

21. This agreement shall become effective immediately upon execution by the parties, supersedes any previous agreements or understandings, and may not be modified except in writing signed by all parties.

Governing Law

22. This agreement is entered into in Nevada and shall be construed and interpreted in accordance with federal laws, rules of procedure, and common law in the Ninth Circuit, except where state law controls or governs this Agreement, or any portion thereof. Where state law is to be applied, this Agreement, or the relevant portions thereof, shall be construed, interpreted, and enforced in accordance with the laws, rules of procedure, and/or common law of the State of Nevada.

Dated: ^{September}~~August~~ 4, 2012.

By: 

JAMES OFELDT
Plaintiff, pro se

Dated: ^{September}~~August~~ 7th, 2012.

On Behalf of Defendant

By: 